

*United States Court of Appeals
for the Second Circuit*



APPENDIX

74-1550

74-1550

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NO. 74-1550

THE UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

CARMINE TRAMUNTI, et al.,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

DEFENDANTS-APPELLANTS' JOINT APPENDIX
Vol. T(4) - Pages 352 to 460

253
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PAGINATION AS IN ORIGINAL COPY

1 JHP

2 UNITED STATES OF AMERICA

3 vs

73 Crim 1099

4 CARMINE TRAMUNTI et al.,

5 Defendants

6

7 New York, N. Y.

8 January 23, 1974 - 10:00 a.m.

9 (Proceedings resumed:)

10 THE COURT: Good morning, ladies and gentlemen.

11 We have so far gone through over two hundred jurors
12 in an attempt to select a jury here. On Monday last, at
13 the very persuasive pleading of Mr. Lopez, I agreed to permit
14 the defense counsel to have three extra challenges for the
15 alternates. In effect, however, I have seen that the defense
16 counsel have already used three challenges in the alternate
17 row. Accordingly, I think that twenty-eight challenges
18 are quite enough, so you have eight challenges left.

19 Mr. Lopez, I understand that you want certain
20 items marked as Court's exhibits.

21 MR. LOPEZ: Yes, your Honor.

22 Your Honor, is it correct, then, that in accordance
23 with your Honor's ruling, we will have five challenges and
24 then three challenges?

25 THE COURT: That's right.

1 JHP

2 MR. LOPEZ: I think that the defense would like to
3 take an exception, your Honor.

4 THE COURT: Absolutely. I don't know whether an
5 exception is necessary, but it is noted.

6 MR. LOPEZ: Thank you very much, your Honor.

7 Your Honor, at this time I would like to introduce
8 as Court Exhibit Number 7 an article appearing on this trial
9 in the Spanish-speaking newspaper here in New York on
10 January 21, 1974.

11 As your Honor well knows, we have had the possibility
12 of selecting jurors from the Spanish community, and, of
13 course, this paper is widely circulated among them, and it
14 discusses this trial, indicating what they deem prominent
15 defendants as Tramunti and Louis Inglesi.

16 As Court Exhibit Number 7, we would like to have
17 marked the New York Post article of January 22, 1974, again
18 discussing the trial itself and labeling this case "the
19 Tramunti trial" or "the Tramunti jury".

20 I would also like to introduce into evidence, that
21 is, as a Court exhibit, your Honor, an article in the Daily
22 News dated January 23, 1974, again discussing this trial,
23 labeling it again "the Tramunti trial", your Honor.

24 So I have three exhibits which I hope the Court
25 will receive and which I ask be marked 6, 7 and 8.

1 JHP

2 THE COURT: Yes. Mark them, Mr. Clerk.

3 (Court Exhibits 6, 7 and 8 marked for identifica-
4 tion.)

5 THE COURT: Did you indicate, Mr. Lopez, that one of
6 them is from today's News?

7 MR. LOPEZ: I believe yes, your Honor. One of them
8 is.

9 THE COURT: All right.

10 MR. LOPEZ: Your Honor, a second point, your Honor,
11 on a very important issue in this trial: the introduction of
12 approximately one million dollars which the Government intends
13 hopefully to introduce into evidence, and, of course, mention
14 during the course of their opening.

15 Many defense counsel have advised me, and I re-
16 spectfully request in all our behalves that we be permitted oral
17 argument on this matter after the jury is selected and before
18 the Government's opening.

19 We have indication that Mr. Phillips in his opening
20 will certainly have occasion to refer to this money. We feel,
21 your Honor, that the Court should be permitted at least to
22 resolve the issue of irrelevancy or relevance, as you wish
23 to put it, and until that final determination is made by the
24 Court, hopefully after hearing defense counsel and the
25 Government, in the event that that issue is not decided, the

1 JHP

2 Government preclude itself from referring to it in its open-
3 ing or mentioning it, even, during the course of its opening
4 or during the course of receiving evidence, your Honor.

5 THE COURT: I think that is fair, except, Mr.
6 Lopen, I think we will do it before the jury is completely
7 selected. I don't know exactly how many veniremen we have
8 presently, but if we don't have enough to really go through
9 it and we have to wait for the afternoon, why don't we
10 use this morning for it?

11 MR. LOPEZ: I understand we are still in the pro-
12 cess of research, your Honor. We would like to give your
13 Honor as many cases as possible that are in point, your
14 Honor.

15 I understand that some of these cases are not yet
16 available. Some of the defense counsel are still in the
17 process of researching the matter. Defense counsel will, of
18 course, be as brief as possible, your Honor, under the circum-
19 stances.

20 THE COURT: I would hope so.

21 MR. LOPEZ: Right. Therefore, your Honor, I would
22 hope that we could argue this point tomorrow morning, at
23 ten o'clock, and in that way we will have our cases, if in
24 point, and we will have xerox copies of those cases to pre-
25 sent to your Honor.

1 JHP

2 In that way, your Honor can make a ruling knowing
3 that it has received all the cases in point, your Honor,
4 rather than just have it this afternoon, because I think we
5 would be at a disadvantage.

6 THE COURT: I don't want to put anybody at a dis-
7 advantage, Mr. Lopez. I just want to try and use the time
8 as economically as possible.

9 Truthfully, I don't even know if we are going to
10 get a jury today. I am terribly disturbed about the length
11 of time we have taken to pick a jury.

12 MR. LOPEZ: May we suggest, your Honor, if we can't
13 get sufficient prospective jurors, we have been given even
14 this morning additional tapes. As a matter of fact, we
15 have been given at least six additional cassettes. Defense
16 counsel are still in the process of listening to those
17 tapes.

18 I think from a point of economy timewise this would
19 be a superb occasion, if we did not finally select a jury
20 today, to give defense counsel an opportunity to listen to
21 those tapes. We are trying to make transcripts of the other
22 tapes that we received only a short while ago, your Honor,
23 so that defense counsel will certainly be in preparation of
24 the case.

25 I think that before any witness takes the stand for

1 JHP

2 the Government we should at least have knowledge and be in a
3 position to cross-examine that witness with transcripts of
4 prior statements if they are inconsistent.

5 So I think that we could take advantage of any time
6 that the Court could give us.

7 THE COURT: I don't want to waste time. I will be
8 very honest about it. I do want to see what the chances are
9 of selecting a jury today.

10 MR. ELLIS: Your Honor, we have an open item of
11 business.

12 On my motion yesterday to obtain the names of the
13 persons present at the act with which Mr. Mamone is charged,
14 the overt act --

15 THE COURT: I understand that. I will have a reso-
16 lution for you before noontime today.

17 MR. FISHER: If your Honor please, with regard
18 to the Court's decision to deny to us those three challenges,
19 I think the record should reflect that it was the strategy of
20 defense counsel in exercising the challenges that it has
21 been relying on the number we were told we were going to
22 have, and I doubt very much if the three alternates would
23 have been challenged in the manner that they were, were we
24 told then, as we were just now, that we would be denied those
25 challenges.

1 JHP

2 THE COURT: Your objection is noted. As I said
3 before, I think I have been more than fair and patient. The
4 denial of three challenges, when you have eight left,
5 really should create no -- I think the word I have been using
6 is "insuperable burden".

7 MR. FISHER: You have used that frequently.

8 THE COURT: Unfortunately.

9 If everybody will just stay here, I want to leave
10 and go across the hall and find out how many prospective
11 jurors we have and what our chances are for the rest of the
12 day.

13 (Recess.)

14 THE COURT: We still have some jurors left. How-
15 ever, as you know, it takes some time to lay down the ground
16 rules and so on and so forth. We have two other jurors who
17 we believe will be back this afternoon, which will be another
18 twenty-four.

19 Just for economy of time, can't I do them all at
20 once?

21 So I think that what we are going to do is break
22 until one-thirty. Does anybody here have any objection
23 to my going out to the jury and telling them that we are
24 working here, and they are not wasting their time sitting
25 in the jury room, but we have other things to take care of,

1 JHP

2 and that they will be taken to lunch and after lunch we will
3 start again. Does anybody object to it at all? If you
4 want me to bring them out and put them in, you can sit here
5 but it seems like a terrible waste of time.

6 All right. It is unanimous that there is no objection.

8 One-thirty, and please be prompt. I want to get
9 this jury picked today.

10 (A luncheon recess was taken.)

11 - - -

12 A F T E R N O N S E S S I O N

13 1:30 p.m.
14 THE COURT: Gentlemen, you may remember that when
15 finished up last night I had not inquired of Miss Nancy
16 B. Jewell -- at least, my recollection is that I did not
17 inquire of her, and I propose to do that now.

18 We still do have open, I think, a motion by counsel
19 for someone as to who else was present at the overt act.

20 MR. ELLIS: Yes, sir.

21 THE COURT: In view of the fact that basically we
22 have given to all the other defendants who were present at
23 the overt acts they are named in, I think we might as well
24 be consistent.

25 You understand me, Mr. Phillips?

1 JHP

2 MR. PHILLIPS: Yes, your Honor.

3 THE COURT: All right. It might take a little
4 while for him to figure it out. We will give him that little
5 while. All right.

6 MR. ELLIS: Your Honor, it is taking me more than a
7 little while to figure out what is going on, too.

8 MR. SUNDEN: Your Honor, most respectfully, I am in
9 exactly the same position as Mr. Ellis.

10 THE COURT: Whom do you represent, Mr. Sunden?

11 MR. SUNDEN: William Alonzò. He was not named in
12 any overt acts or substantive counts, and your Honor directed
13 that we receive one overt act. Again, I received the same
14 as far as information is concerned as Mr. Ellis.

15 I would ask that you direct Mr. Phillips to supply
16 me with any names.

17 THE COURT: Why not? That is a direction, Mr.
18 Phillips, not a request.

19 MR. WARNER: Your Honor, while the jury is being
20 brought back, may I approach the bench?

21 THE COURT: Certainly.

22 (At the side bar:)

23 MR. WARNER: Your Honor, my client is Joseph Ceriale.
24 He works for the Housing & Development Administration. He is
25 not a man of very great means. He has a wife, and he has a

1 JHP

2 daughter. He has been informed by his boss, Michael Halperin
3 that they can give him work on the night shift. He does
4 emergency glazing, carpentry and plastering work for the HDA
5 in places where landlords have violations and so on.

6 Your Honor, I would request the Court if we could
7 have permission for Mr. Ceriale to leave at three o'clock
8 each day. He gives his consent not to be present. Of course
9 I will be here on his behalf.

10 THE COURT: He understands it is a voluntary
11 absence?

12 MR. WARNER: Of course.

13 THE COURT: And he can't object to it later?

14 MR. WARNER: Yes; of course. He is requesting that
15 he be allowed to make that voluntary absence.

16 THE COURT: All right. Do you have any objection?

17 MR. CURRAN: Your Honor, I am concerned, frankly,
18 about the precedent with defendants coming and going in the
19 courtroom.

20 THE COURT: I am talking about today.

21 MR. WARNER: No. I am talking about --

22 MR. CURRAN: He is talking about the trial.

23 MR. WARNER: He has been able to get placed on the
24 night shift.

25 THE COURT: I will take it on a day-by-day basis.

1 JHP

2 Remind me every day about it.

3 MR. WARNER: In order to avoid a precedent.

4 THE COURT: Yes.

5 MR. CURRAN: I have no objection to today, your
6 Honor.

7 MR. WARNER: It is not necessary for today, it turns
8 out. Could I get permission from the Court for tomorrow, and
9 then subsequently I will remind the Court on a daily basis.

10 THE COURT: It is not necessary for today?

11 MR. WARNER: No. Today it is not necessary, although
12 I will speak to him, and if it is necessary --

13 THE COURT: Yes.

14 MR. WARNER: All right.

15 (In open court:)

16 THE COURT: Miss Jewell, as I recall it, yesterday
17 we had not asked you the particular questions which I have
18 asked all the other jurors; is that right, ma'am?

19 PROSPECTIVE JUROR 3: Yes.

20 BY THE COURT:

21 Q Miss Jewell, you live in Manhattan; is that right?

22 A Yes.

23 Q You live there for the last five years?

24 A Yes.

25 Q Are you presently employed?

1 JHP

2 A Yes.

3 Q What do you do?

4 A I work for Harper & Row, which is a publishing
5 house, in the children's book department.

6 Q You are in the children's book department?

7 A Yes.

8 Q Are you an editor up there?

9 A No; I am a manuscript reader.

10 Q Have you worked there for the last five years?

11 A Yes.

12 Q Would you tell us what newspaper you read?

13 A The Times. Sometimes the Post, occasionally.

14 Q What TV or radio news programs do you watch or
15 listen to?16 A I watch the evening news sometimes and sometimes
17 the late night news.18 Q Have you ever heard anything about of the defend-
19 ants in this case, or this case?

20 A No.

21 Q Have you ever been the victim of a crime?

22 A My apartment was robbed several years ago.

23 Q You were not there, though?

24 A No; I wasn't.

25 Q Did you make a complaint to the police?

1 JHP

2 A I reported it.

3 Q Did you ever appear in any proceeding in connection
4 with that?

5 A No.

6 Q Is any member of your family or really close friend
7 a member of any law enforcement agency?

8 A No. My father is a lawyer.

9 Q We like to think that they are partially a law
10 enforcement agency.

11 Can you tell us what kind of law your father prac-
12 tices?

13 A Well, he used to work for a corporation, and he is
14 now associated with Legal Aid in Westchester.

15 Q With Legal Aid in Westchester?

16 A Yes.

17 Q Does he do criminal work with the Legal Aid Society?

18 A I don't believe so, no.

19 Q The way you say that, it shounds like he doesn't
20 talk about his work, at home.

21 A He doesn't talk much about it. He is a secretary.
22 He is a member of the board of directors.

23 Q Of the Legal Aid in Westchester?

24 A Yes.

25 Q Have you ever been a juror in a civil or criminal

1 JHP

2 case or a member of a grand jury?

3 A I was an alternate juror in a civil case two years
4 ago. I think it was the State Court.

5 Q What kind of a case was it?

6 A It was a suit, an accident suit.

7 Q A car accident type thing?

8 A Yes.

9 Q I asked a number of questions of the panel, and I
10 said I assumed I was going to get a negative answer from
11 them to each question. Would you have answered any of those
12 questions other than as "No"?

13 A No; I would not have.

14 Q The answer is, you would have answered them all
15 "No"; right?

16 A Yes.

17 Q Is there anything that you want to tell me which
18 you feel might impede you from rendering a fair and impartial
19 verdict in this case?

20 A Well, I would like to talk to you.

21 Q Surely. Do you want to talk to me here at the side
22 bar?

23 A I would like to.

24 THE COURT: Come on up.

25 (Discussion at the side bar with Prospective Juror

1 JHP

2 Number 3.)

3 (In open court:)

4 THE COURT: Miss Jewell is excused.

5 (At the bench:)

6 THE COURT: I received a sealed note from Thomas

7 J. Kingsley, who is Juror Number 2.

8 Mr. Kingsley, if you recall, is unemployed. He has
9 an opportunity. His wife told him last night that he got a
10 phone call from an agency representing Carroll's Restaurant.
11 He has been unemployed for two months. If he starts in at
12 their school on January 30th, he gets paid, and he gets the
13 schooling paid for.

14 This was apparently the job that he was hoping to
15 get.

16 You know, service on a jury under the circumstances
17 that we are projecting here is a tremendous burden, but this
18 kind of ruins the guy's economic life.

19 MR. CURRAN: I remember, your Honor, his wife was
20 also unemployed. He is the fellow that worked in Indiana
21 for fourteen months.

22 MR. LOPEZ: Right.

23 MR. CURREN: It's in your Honor's hands.

24 THE COURT: You gentlemen have opinions, too.

25 MR. CURRAN: I would assume he would be unhappy.

1 JHP .

2 MR. LOPEZ: Right.

3 THE COURT: If I were he, I wouldn't know whom to
4 kill first.

5 MR. LOPEZ: God knows how he would react with his
6 fellow jurors et cetera.

7 THE COURT: All right. Let me have him up here.

8 (In open court:)

9 THE COURT: Mr. Kingsley, would you come up, please,
10 to the bench.

11 (Discussion at the side bar with Prospective Juror
12 Number 2.)

13 (In open court:)

14 THE COURT: Juror Number 2, Mr. Kingsley, is
15 excused.

16 Mr. Clerk, bring in the additional panel.

17 (Pause.)

MP 12pm

18 THE COURT: I guess you are wondering what is
19 going on. We are waiting for a new jury panel.

20 All right, Mr. Clerk; will you swear the new panel.

21 (A panel of prospective jurors was duly sworn.)

22 THE COURT: I am directing myself basically to those
23 jury panel members who have just come in.

24 I think -- I know that you recognize that being on
25 a jury is a duty and a privilege. If you or someone very

1 MP

2 close to you were to be charged wrongfully with some crime
3 or misdemeanor, whatever it might be, you would want someone
4 on that jury who thinks just like you do.

5 I know that your feel your duty as a citizen is to
6 serve. That's why you came down to the courthouse, to begin
7 with.

8 Now, I know that you came expecting to serve for
9 two weeks. This case may last for four to six weeks. You
10 should also understand that there is a possibility of your
11 being sequestered.

12 Let me explain what "sequestered" means. Being
13 sequestered means that after the trial, which goes on during
14 the day, you will not be going home. You will be put up
15 at Government expense; you will get all your food and all the
16 rest of it, at Government expense, all at Government expense.

17 Now, as your name is called, I want you to under-
18 stand the background, the possibilities of this case first.
19 As your name is called, I am going to ask whether this is an
20 insuperable burden for you individually. Don't tell me that
21 it's going to be a terrible chore for your employer unless
22 your employer is going to fire you. That's a personal burden.
23 But I want you to be mindful before you answer yes or no to
24 the question about your duties as a citizen and also about the
25 privilege it is to serve.

1 MP

2 All right. Now, Mr. Clerk, would you call the
3 first juror.

4 THE CLERK: Juror Number 2 is now Archie Gunthorpe.
5 BY THE COURT:

6 Q Mr. Gunthorpe -- is that correct, sir?

7 A (P. J. 2) Yes, sir.

8 Q Knowing the possibilities in this trial, would this
9 place an insuperable burden on you, sir?

10 A No, sir.

11 THE COURT: All right.

12 THE CLERK: Juror Number 3 is now Peter E.
13 Jacobson.

14 THE COURT: Mr. Jacobson, knowing the possible
15 ground rules of being a juror in this case -- I say "possible"
16 -- that's all they are right now -- would you be willing to
17 serve or do you think that would cause you a real hardship?

18 PROSPECTIVE JUROR 3: No.

19 THE COURT: It would not cause you a hardship?

20 PROSPECTIVE JUROR 3: No.

21 THE COURT: All right. Take the third seat in the
22 first row, please.

23 THE CLERK: Juror Number 4 is now Mrs. Nettie
24 Geller.

25 THE COURT: May I have the card, please.

1 MP

2 Mrs. Geller, knowing the ground rules or possible
3 ground rules, would it cause you a great hardship to serve on
4 this jury?

5 PROSPECTIVE JUROR 4: Yes, your Honor.

6 THE COURT: All right. Come on up.

7 (Discussion at the side bar with Prospective Juror
8 Number 4.)

9 (In open court:)

10 THE COURT: Mrs. Geller is excused.

11 Thank you, marshal.

12 By the way, ladies and gentlemen, I will strongly
13 recommend, if you have to leave your seat at any time, take
14 your belongings with you.

15 THE CLERK: Juror Number 4 is now Angela A. Florio.

16 Is that Miss or Mrs., ma'am?

17 PROSPECTIVE JUROR 4: Mrs.

18 THE COURT: Mrs. Florio, do you feel that serving
19 on a jury under the conditions I suggested would cause you a
20 great hardship?

21 PROSPECTIVE JUROR 4: Yes.

22 THE COURT: All right. Come on up. We will chat
23 about it.

24 (Discussion at the side bar with Prospective Juror
25 Number 4.)

1 MP

2 Plains Supreme Court.

3 Q What kind of a case was it?

4 A A civil -- civil action.

5 Q What kind of a civil action? Was it an automobile
6 knock-down case?

7 A No, sir.

8 Q A contract case?

9 A It was a corporation. It was a group of individu-
10 als against a corporation -- employees.

11 Q And do you recall how the case came out?

12 A There was an award for the employees.

13 Q All right. Could you tell us what newspaper you
14 read?

15 A The Daily Argus and sometimes the News.

16 THE COURT: Gentlemen, in case you don't know
17 it, the Daily Argus is a Gannett newspaper published up
18 in Westchester, in the evening.

19 Q All right. What if any TV news programs do you
20 watch, sir, or do you switch around the dials?

21 A It's kind of hard to do with five kids. I kind
22 of like to watch the news, but sometimes we have a disagree-
23 ment over whether I am going to watch the news or they are
24 going to watch --

25 Q How is Captain Kangaroo? All right. Have you

1 MP

2 read anything or heard anything or seen anything about this
3 case and these defendants?

4 A I have been thinking about that since I came in
5 here, and I haven't. I can't say I have.

6 Q Now, are you related to or a close friend of any
7 member of a law enforcement agency?

8 A No. Just a friend of the family. I have my
9 father's cousin -- my father's cousin's daughter is married
10 to a policeman.

11 Q All right. Look: we want to be as complete as
12 possible and as honest as possible.

13 A In Nassau County, but I don't see him maybe about
14 once or twice a year.

15 Q Just at weddings; is that what it is?

16 A Yes, sir.

17 Q Before I go on, Mr. Estok, do you know of any
18 reason why you would be unable to render a fair and impartial
19 verdict in this case?

20 A I don't think so. No, sir.

21 THE COURT: All right. Fine.

22 Q Mr. Pasierb, you live in Westchester also?

23 A (P. J. 10) Yes.

24 Q And have you lived there for the last five years?

25 A Yes, sir.

1 MP

2 Q Are you presently employed?

3 A Yes, sir.

4 Q What do you do?

5 A I am a quality control man on Otis Elevator, for
6 the Otis Elevator Company.

7 They did not make the elevators in this building.

8 Q Have you been so employed for the last five years?

9 A Yes, sir.

10 Q Are you married?

11 A Separated.

12 Q Have you ever been the victim of a crime?

13 A No, sir.

14 Q Have you ever served on a jury before?

15 A No, sir.

16 Q What newspaper do you read, sir?

17 A Daily News and the Herald Statesman.

18 THE COURT: By the way, the Herald-Statesman is
19 another one of the Gannett Chain newspapers up in Westchester.20 Q All right. Do you watch a regular TV news program
21 or listen to a regular news broadcast?

22 A CBS and Channel 7.

23 Q Have you heard anything or read anything or seen
24 anything about this case or any of the defendants in the case?

25 A No, sir.

2 Q Do you have any relatives or close friend who is
3 employes by a law enforcement agency?

4 A No, sir.

5 Q Do you know of any reason why you would be unable
6 to render a fair and impartial verdict in this case?

7 A No, sir.

8 THE COURT: All right. Thank you.

9 Q Mr. Antonecchia, you come from Rockland County?

10 A (P.J. 11) Yes, sir. Nyack.

11 Q Have you been up there for the last five years?

12 A Yes, sir.

13 Q Are you presently employed?

14 A Yes; I am.

15 Q What kind of work do you do?

16 A I am an engineer with the New York Telephone
17 Company.

18 Q And do you work here in the city, or do you work up
19 in Nyack?

20 A Well, primarily in the city. State-wide.

21 Q Are you married, sir?

22 A No. I'm a bachelor.

23 Q Have you ever been the victim of a crime?

24 A No; I haven't.

25 Q Have you ever served on a jury before?

1 MP

2 A No; I haven't.

3 Q What newspaper do you read, sir?

4 A Primarily the Wall Street Journal and, to a lesser
5 extent, the Times.

6 Q What TV news program do you watch, if any?

7 A None on a regular basis. I switch around.

8 Q Have you seen anything or heard anything any place
9 or read anything about this case or any of the defendants
10 in this case?

11 A Yes. This morning, while I was waiting --

12 THE COURT: All right. Why don't you come up, and
13 we will chat about it.

14 (Discussion at the side bar with Prospective Juror
15 Number 11.)

16 THE COURT: All right. Take your place.

17 MR. LOPEZ: May I ask that you ask those two
18 questions, the ones we are interested in.

19 MR. CURRAN: The so-called Watergate question.

20 THE COURT: I put the general question.

21 MR. CURRAN: Yes, but they were sitting outside.

22 (In open court:)

23 BY THE COURT:

24 Q Now, Mr. Antonecchia, do you have any relative
25 or close friend who is employed by any law enforcement

1 MP

2 agency?

3 A (P. J. 11) No, sir.

4 THE COURT: Once again, let me ask all of the
5 jurors and prospective jurors whether because this case in-
6 volves narcotics, do you feel any bias either for or against
7 the defendants or for or against the Government or in any way
8 be impaired in rendering a fair and impartial verdict?

9 All right. If anyone is going to answer "Yes"
10 to that who is sitting in the jury box, raise your hand, and
11 if anyone down in the back has a "Yes" answer to that, let
12 me know, if your name is called.

13 I think I mentioned before the press and television
14 coverage in Washington by certain Government officials or
15 ex-Government officials. Would any prospective juror have
16 any difficulty in rendering a fair and impartial verdict?
17 Would you have a bias, for example, against the United
18 States Government, the Department of Justice or the U. S.
19 Attorney's office because of those allegations in the press?

20 MR. CURRAN: The jury is satisfactory to the
21 Government, your Honor.

22 MR. LOPEZ: The jury is satisfactory to the
23 defense, your Honor.

24 THE COURT: All right, Mr. Clerk, swear the jury.

25 (The jury and six alternates were duly sworn.)

14
contd

1 MP

2 THE COURT: Mr. Marshal, would you escort the jury
3 from the courtroom into the jury room in the back.

4 Those members of the jury panel who were not
5 selected for this jury are to return to the central jury
6 room. One of the marshals, hopefully -- would you bring
7 over the cards? I recognize that some of you were called
8 in on extremely short notice. It is unfortunate that it had
9 to happen that way, and I am sorry it had to happen that way,
10 and I do want to express my personal appreciation and the
11 appreciation of not only just the lawyers and the litigants
12 here but, if I can, the appreciation on behalf of the whole
13 country that we have such fine people who will come in on
14 short notice and recognize their duty as citizens as you
15 folks have done.

16 Thank you very much. All right, Marshal.

17 (The jury panel left the courtroom.)

18 (At the side bar:)

19 MR. PHILLIPS: I just happened to notice that
20 Juror Number 6 has got Readers Digest in his possession.

21 THE COURT: That is just a housekeeping detail.
22 I will explain to you exactly what it is. Someone spotted
23 that sticking out of the back pocket or the side pocket of
24 the coat of one of the jurors. We don't know what's in it,
25 and we are going to have to take it away.

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2 All right. Let's get the Readers Digest out.

3 MR. ELLIS: Your Honor, I believe that there is
4 an article in the current Readers Digest --5 THE COURT: The Readers Digest or any other
6 reading material, Marshal.

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3 THE COURT: While we are waiting for that we might
4 as well continue on. I expect the government will open at
5 10:00 tomorrow. I will have a few brief prefatory remarks
6 to make.

7 I have had requests for two things from the defense
8 One, that I instruct the jury that the fact that you all
9 went out together to discuss exercising the challenge doesn't
10 mean that you are acting together or anything like that; it's
11 just as a matter of convenience.

12 Somebody else specifically requested -- I forgot
13 who it was -- that Mr. Lopez' coming up here did not indicate
14 Mr. Lopez was acting on behalf of all of you, whatever. I am
15 going to have some difficulty in phrasing it, as to how Mr.
16 Lopez was selected by me as lead counsel. I will take care
17 of that. He doesn't want me to use the word cooperating. We
18 will work that out.

19 As I said, I will have very brief comments to make.
20 After that I expect the government to open. Does every
21 defendant now expect to open? There are times when you don't

22 Let me just go around. Anybody who doesn't pick
23 up his hand.

24 MR. H. SIEGAL: That depends on the opening by the
25 government, Judge. I can't make a decision until I hear it.

26 THE COURT: I understand that, Mr. Siegal. I am

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2 talking abour right n ow. There are some poeple who are
3 committed not to make an opening right now.

4 MR. H. SIEGAL: I am committed not to make openings
5 in every case.

6 THE COURT: All right. There are some peopel who
7 realistically right now, no matter what happens, are not going
8 to make an opening.

9 One, two three.

10 MR. LOPEZ: Your Honor, I think much depends on
11 your Honor's rulings on this morning's applications whether
12 some of defense counsel will open or nto.

13 THE COURT: I understand that. Listen, I am not
14 forcing anybody into anything right now. I am just trying
15 to get a time frame for this.

16 I want to tell you one more thing. How long do you
17 want to open, Mr. Curran or Mr. Phillips? Who is going to
18 open?

19 MR. CURRAN: Mr. Phillips is going to open, and it
20 is estimated about 45 minutes, perhaps less.

21 THE COURT: All right. I would like to make it less.
22 I am not putting any bounds whatsoever on any
23 defense counsel for his opening. You understand? You can say
24 what you want to. I heard today during the argument of the
25 motions everybody said, "well, my client is a fringe defendant."

2 If that be, there are some great openings, like "listen, he
3 is not even mentioned," something like that. However, if
4 you can make it short I would appreciate it. I would like to
5 possible start taking some testimony tomorrow. If we can't,
6 we can't.

7 MR. Richman, I think I mentioned to you yesterday
8 we are not going to work this Saturday. I am sure that that
9 will make those people who take -- Mr. Sunden, you take care
10 of your children on Saturdays, isn't that right? I am sure
11 they will be happy to see Daddy.

12 We have had I think a very relaxed and happy atmos-
13 phere up through this point. I feel that at times I have
14 made some funnies and I feel that at times I might have been
15 the point of some. I don't personally object to it. How-
16 ever, it is not going to ha-pen from here on out, one way or
17 the other. This case is going to be tried straight. I believe
18 you know my admonition. If you have an objection stand up and
19 say you have an objection, sit down. If you feel that you
20 want to make a record of exactly what your objection is I
21 want it written out.

22 By the way, there are no marks for penmanship. Just
23 get your thought in there. I assume everybody is ready to roll
24 tomorrow.

25 Mr. Curran?

2 MR. CURRAN: Your Honor, the government will have
3 sp,e 3500 material.

4 THE COURT: Tonight?

5 MR. CURRAN: Yes, your Honor. I have it at my
6 office, if defense counsel would like to come up. If you
7 prefer to wait around here, we will get it down in a few
8 minutes, whichever you prefer.

9 THE COURT: They are not going to wait here. I will
10 tell you why. I think I mentioned at some point I am respon-
11 sible for some 601 other cases. Most of those only have a
12 few attorneys in them. However, I do have a hearing which
13 was scheduled for 4:30 this afternoon. I don't mind if you
14 stay in the courtroom, but let the other guys come forward.

15 MR. CURRAN: Then, your Honor, may I make it
16 available in my office right after the session?

17 THE COURT: Sure.

18 MR. CURRAN: Room 401, your Honor.

19 THE COURT: All right.

20 MR. WARNER: Your Honor, I have been hearing some
21 conflicting reports, all from Mr. Phillips as the source. I
22 am sure there has been a misunderstanding.

23 Your Honor, I wondered if your Honor would direct
24 the government to give the defense some notion at least of
25 the order of preliminary witnesses so that the new tapes,

2 which are approximately 13 in number, could be digested in
3 time to be ready for either Barnaba or Stasi.

4 THE COURT: I think if you pick up the 3500 material
5 that will tell you right there. That is my guess.

6 Would it, Mr. Phillips?

7 MR. PHILLIPS: Not as between Barnada and Stasi,
8 your HOnor. The 3500 Mr. Curran is going to turn over this
9 evening does not relate to either Barnaba or Stasi.

10 I think I stated on the record yesterday a general
11 outline of the government's order of witnesses with respect
12 to Barnaba and Stasi and I think that should suffice for
13 defense counsel.

14 THE COURT: Why don't you remind them?

15 MR. PHILLIPS: I think, your Honor, yesterday I said
16 that as between Barnaba and Stasi, Stasi would appear earlier
17 than Barnaba would in the order of witnesses.

18 THE COURT: That is my recollection.

19 Gentlemen, I don't see any necessity for everybody
20 sitting here listening to me basically reading an order on
21 sequestration. You want to leave Mr. Lopez? It's the same
22 one that I read the other night.

23 MR. DOWD: How about the Reader's Digest, your Honor?

24 THE COURT: I assume it's gotten.

25 THE MARSHAL: There are three different editions

2 of the Reader's Digest, here, your Honor.

3 MR. ELLIS: Your Honor, the issue to which I was
4 referring was the January issue, if that is among the three.

5 THE COURT: All right. Let me go through it.

6 MR. ELLIS: Your Honor, my recollection isn't
7 entirely clear, but I believe it also mentions the names of
8 potential government witnesses.

9 THE COURT: That should be a great help for the
10 defense counsel.

11 MR. ELLIS: It was the juror that had it, not the
12 defense. But if you want to give it to us --

13 THE COURT: Oh, come one.

14 MR. FISHER: If your Honor please, I would like to
15 have the record disclose which juror it was had the Reader's
16 Digest of January. I would like the Court to also inquire
17 individually of that juror whether or not they read that
18 article.

19 THE COURT: Is this article supposedly the one
20 entitled "Night of the Big Drug Bust"?

21 MR. ELLIS: Yes, your Honor.

22 THE COURT: Gentlemen, in case you didn't notice,
23 I received a mound of literature, not just one Reader's Digest.
24 I don't even recognize some of the names of the magazines,
25 I must admit. I don't think I will have too much difficulty

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2 leafing through Family Circle or Women's Day, but some of the
3 other ones I think I am going to have to go through to see if
4 there is anything about this case in them. Does everybody
5 want to sit nice and still and very quiet while I read the
6 magazines?

7 MR. LOPEZ: Yes.

8 THE COURT: You want to do it right now?

9 MR. H. SIEGAL: No, of course not.

10 MR. ELLIS: Your Honor, if that juror read about
11 this case and is sequestered tonight and discusses it with
12 the other jurors we might have a problem. We ought to clear
13 that up.

14 THE COURT: I think that question has already been
15 asked of the jury and answered. They have indicated that
16 they have not read about the case. We got a clear jury that
17 way. If there was something we didn't know about beforehand
18 never asked the question, then we would have a problem. But
19 I don't see that the problem exists right now.

20 MR. ELLIS: Judge, that article is not specifically
21 about this case but mentions real episodes and places and
22 persons.

23 THE COURT: Mr. Ellis, the thing is I asked about
24 these defendants or this case. I don't know how more specific
25 I can be.

2 MR. LOPEZ: What we are afraid of, your Honor, if I
3 may be heard, is that sometime later during the course of
4 trial the juror who has now been selected may associate what
5 he is hearing with what he has read. At that point there may
6 be a link of association. All we would like to know from
7 Juror number 6, if he is the one who had in his possession the
8 Reader's Digest, is if he read that article.

9 THE COURT: Is it Juror number 6?

10 MR. PHILLIPS: Yes, it was.

11 THE COURT: All right.

12 SCHWARTZ: Your Honor, I would like to know if the
13 juror read the article, but I don't see how we can allude to
14 that particular article without doing more damage. By giving
15 the name of that article I think we might do more damage.

16 THE COURT: Night of the Big Drug Bust.

17 MR. SCHWARTZ: Yes.

18 MR. PHILLIPS. I think your Honor's question directed
19 to them, which was not only whether or not they read anything
20 about this case, about these defendants, but is there anything
21 that would prevent them from acting as a fair and impartial
22 juror, was answered by each of these jurors.

23 THE COURT: I believe it was also.

24 MR. ELLIS: Your Honor, Juror number 6 did pause for
25 a long time before answering that question and it could very

2 well be that he didn't recognize whether something would in
3 fact impair his fairness. I think we ought to ask him specifically
4 whether he read this article. Where we go from there I
5 am not quite sure, but we ought to know that at least.

6 MR. SCHWARTZ: Your Honor, if I may, I would ask,
7 if the juror is going to be asked the question, I would ask
8 the juror if he read any article in the Reader's Digest con-
9 cerning any matter pertaining to narcotics. I think that would
10 be the end of it, without specifically mentioning the name
11 of that article.

12 THE COURT: I am game to go with that one. All
13 right?

14 MR. FISHER: Yes, your Honor.

15 THE COURT: Do you want the whole jury back on
16 this?

17 MR. LOPEZ: No, just Juror number 6.

18 THE COURT: All right. I want you quiet while he is
19 back here.

20 (Juror Number 6 present.)

21 BY THE COURT
22 OF JUROR NUMBER 6:

23 Q Mr. Estock; somebody spotted that you had a January,
24 1974 Reader's Digest. Have you started reading it yet?

25 A Yes, I did, this morning.

26 Q Did you read anything in here about narcotics or

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2 anything like that?

3 A No.

4 Q No, your didn't?

5 A No.

6 Q Fine.

7 A I --

8 Q It was a simple question.

9 A I didn't even know there was anything in there.

10 THE COURT: All right, fine. thank you very
11 much.

12 (Juror number 6 left the courtroom.)

13 MR. SALKOW: If your Honor please, I don't mean to
14 harp on the issue, but some counsel seem to believe there was
15 more than one Reader's Digest. Is that so, or was there only
16 one?

17 THE COURT: One of that date. The other one was
18 July, 1973.

19 MR. KING: Does your Honor have any proposed idea as
20 to the pattern in which the openings are going to be made by
21 the respective defense attorneys?

22 THE COURT: Yes.

23 MR. KING: May I follow it up with a suggestion,
24 if you don't, that we just go around from left to right?

25 MR. LOPEZ: Judge Duffy, that problem has already

2 been settled. We will follow the traditional grounds.

3 THE COURT: That's funny. That is just what I was
4 going to say.

5 MR. FISHER: The order of the indictment.

6 THE COURT: The order of the indictment. We will
7 start at the top and go all the way down.

8 Mr. Kings, you are out of order, but that's all
9 right.

10 MR. KING: I stand rebuked, Judge.

11 THE COURT: I don't mean it that way. I just mean
12 sitting out of order.

13 All right. Mr. Lopez will stay. I will sequester
14 the jury.

15 (Pause.)

16 (In the robing room; Mr. Phillips and Mr. Lopez
17 present.)

18 THE COURT: I have reviewed very quickly these
19 things and I am having the New Yorker and the Reader's Digest
20 more closely reviewed. I don't see anything in Seventeens...
21 Make It, Family Circle, Woman's Day, Saturday Review World,
22 Woman's Day, Family Circle, Black Sports, and New Times.
23 I am not sure of exactly what kind of a thing New Times is, but
24 these are the articles: Whippings for God, the Mondale Myth,
25 The Manoi Hilton Rebels Hold a Reunion, California Looks for

2 a Better Way to Kill Now that the Death Penalty is Back,
3 Legislators Consider the Alternatives, Gas, Guillotine, Pill
4 The Ultimate Mickey, Betrayed by Bob Dylan, Joe Frazier's
5 Bodyguard and Court of Last Hope, which is described, Once
6 people crossed into Mexico for Whores and abortions, but now
7 thousands seeking everything from perpetual youth to cancer
8 cures are coming for unorthodox medical treatments given by
9 renegade doctors.

10 I really don't see anything wrong with that partic-
11 ular magazine. Do you fellows?

12 MR. LOPEZ: No.

13 MR. PHILLIPS: No. Can I see it a minute?

14 THE COURT: Sure. The New Yorker, January 14, the
15 only item which refers to matters of court is a cartoon with
16 two judges, one turning to the other, saying "try as I may,
17 I keep blowing the pronunciation of 'prurient'." I don't
18 think that would influence the jury.

19 The Plain Truth, a Magazine of Understanding, the
20 articles are personal from the editor, which talks about
21 personal meetings with heads of government, a new look at the
22 energy crisis, Advanced News, which is entitled Fireworks
23 Feared at World Trade Talks; the Dilemma of Prostitution;
24 Genocide; Man's Way to Peace; The Carpenter of Gallilee Who
25 Brought the World Love; Heaven, Hell and Hereafter; What

2 our Readers Say; What you Can Do, speaking of the Devil, and
3 a radio and TV log.

4 I don't think there is anything in that.

5 The July '73 Reader's Digest --

6 MR. LOPEZ: Your Honor, I have gone over all the
7 articles and there is nothing there relating to the instant
8 case or narcotics in general.

9 THECOURT: All right. We are agreed on New Times,
10 I think.

11 MR. LOPEZ: Yes, your Honor.

12 Your Honor, I have also looked at the December, 1973
13 Reader's Digest and there again there does not appear to be
14 any articles regarding the instant case or narcotics in
15 general.

16 THE COURT: All right. I hope I can work out some
17 procedure where I don't have to be the censor in this.

18 MR. LOPEZ: What we could do, your Honor, if I can
19 make a suggestion, perhaps Mr. Phillips can name someone on
20 his staff and perhaps one of defense counsel and we can go
21 over it.

22 MR. PHILLIPS: Is it your Honor's intention to
23 permit the jurors to read newspapers or magazines?

24 THE COURT: Newspapers cut up, with everything
25 concerning every trial, not only this trial, any trial, any

2 crimes, anything like that, it's going to be removed before
3 they get it. They will be big on the Wall Street Journal
4 after this case is finished.

5 As for magazines, we will have to take a look at the
6 magazines as they come in.

7 As for books, there will be no mystery stories,
8 because mysteries generally involve crimes, or courtroom type
9 activities. Historical novels --

10 MR. LOPEZ: Perry Mason?

11 THE COURT: No. Historical novels and stuff, poetry,
12 and so forth.

13 All right, gentlemen. If we can get agreement
14 tomorrow before the trial opens --

15 MR. LOPEZ: My suggestion is someone from your staff and
16 one of defense counsel.

17 MR. PHILLIPS: Sure.

18 MR. LOPEZ: I think that would do it.

19 MR. PHILLIPS: I will designate somebody.

20 MR. LOPEZ: And I will ask someone to volunteer.
21 I think that would be the best way of handling it.

22 THE COURT: Do we have a real literary type, an
23 avid reader of everything, among the defense?

24 MR. LOPEZ: I don't know.

25 THE COURT: Let me make another suggestion to you.

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2 Let me just instruct the marshals that they are to sequester
3 the jurors under the same conditions as they were the other
4 night.

5 MR. LOPEZ: Yes, your Honor.

6 THE COURT: And I will enter a formal order, so that
7 I don't have to sign for every meal, which I have to do now.

8 MR. LOPEZ: Perfect.

9 THE COURT: I will get up a formal order, including
10 permitting them to have two drinks at night and so on and
11 so forth. All right?

12 MR. LOPEZ: Fine.

13 THE COURT: All right.

14 (In open Court.)

15 THE COURT: Ladies and gentlemen, I requested the
16 marshals to obtain from you all of the reading material which
17 you had in the way of magazines. There is one magazine which
18 I am holding back.

19 Mr. Marshal, if you would be good enough to return
20 the rest of the magazines.

21 As I indicated to you, there will be a sequestration
22 of this jury. I am going to do two things. First of all, as
23 far as tonight is concerned, what is going to happen is this:
24 I am going to ask the marshal to permit you to call your home
25 immediately. The marshal is directed to monitor phone calls

2 in the sense that I want you to tell the folks at home that
3 you are going to be sequestered. Between now and tomorrow
4 morning I am going to get a formal order of sequestration up
5 and I will have this formal order of sequestration sent to
6 your next of kin, whoever you might designate, along with a
7 short letter stating that you are on this jury and that you
8 have been subjected to sequestration as set out in the attach-
9 ed order. Basically what I want to have happen tonight, some
10 of you, in fact, most of you, do have a suitcase down here
11 with clothing that you can use. Who does not?

12 There are four people who do not. I am going to ask
13 in your phone call home -- oh, you are a bachelor. I have a
14 lot of problems.

15 JUROR NUMBER 10: Your Honor, I have a question.
16 Could I approach the bench?

17 THE COURT: sure.

18 (At the side bar.)

19 BY THE COURT

20 OF JUROR NUMBER 10:

21 Q What's the problem?

22 A I am separated and while I was separated I married.
23 a widow. She had a stepson. His name is John Hawkey. He
24 became an addict while we were separated.

25 Q But you are separated?

2 A Yes.

3 Q This is not your son?

4 A No.

5 Q Do you think that this would in any way affect you?

6 A I never thought of it that way.

7 Q Do you think it would affect you?

8 A No, I don't think so.

9 Q How about getting your clothes?

10 A Are you going to let us go or not?

11 Q No, I am not going to let you go.

12 A I could have --

13 Q Do you live alone?

14 A Yes. I live in the same apartment. My wife lives
15 there too. And I got a couple of inlaws.

16 Q Can you get somebody to put together a bag for you?

17 A Yes, yes.

18 Q All right. Go back up and take your place.

19 A Okay.

20 MR. LOPEZ: Your Honor, in behalf of the defense,
21 we would like to exercise a challenge for cause against
22 this specific juror. We are dealing here with a narcotic
23 case and there is a relationship here. The juror himself
24 voluntarily brought it out, giving some significance to the
25 fact that although he has never thought about it before, he

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2 is thinking about it now. I think, your Honor, that this
3 juror should be replaced with one of the alternates at this
4 time.

5 MR. PHILLIPS: Your Honor, the juror when he was
6 first questioned and when questioned on this occasion indicated
7 that there was nothing that would prevent him from being a
8 fair and impartial juror.

9 MR. LOPEZ: The only thing I would like to point out
10 is that the defense has on repeated occasions --

11 THE COURT: I am aware of that.

12 Let me think abou it. They are going to be told not
13 to duscuss it tonight. Let me think about it.

14 MR. LOPEZ: All right.

15 (In open Court.)

16 THE COURT: Ladies and gentlemen, the marshal will
17 take you and sequester you. Let me give you a little out-
18 line of what the formal order will provide.

19 You are going to be provided with housing and food.
20 When I say food I am talking about breakfast, lunch and dinner.

21 I will also be directing the marshal to provide
22 you -- we are going to have an afternoon break and a morning
23 break -- if possible to provide you with some light refreshment
24 during that time, so that you will have food all through the
25 day. : . .

2 In the evening, after the trial day is finished,
3 you will be permitted to purchase at your own expense this
4 time two highballs or two cocktails or two bottles of beer,
5 whatever you want. That is an individual two. In other
6 words, if there is a member of the women's Christian Temper-
7 ence group among your group, she cannot give her two to some-
8 one else.

9 Tonight I want you to see if you can get together
10 and select a social and activities chairman. There will be
11 times when court will not be in session and perhaps you folks
12 would like to do something. That chairman is to advise me
13 in writing -- give a sealed envelope to the marshal -- advise
14 me in writing as to what you might want to do and we will see
15 if we can't arrange to have you do that. I don't know exactly
16 what it's going to be now, but we will see about it. I will
17 do my best.

18 Let me mention to you also that I don't want you
19 tonight or any other night or at any other time until I tell
20 you to discuss this case with anyone. If you have a
21 split personality don't discuss it with the other half. I
22 mean that. I don't want you to form any conclusions or any
23 opinions until all of the evidence is in. At that point I
24 will ask you to form some real firm opinions and at that time
25 you will have your opportunity to discuss the case in full.

2 I should tell you that while tonight you can make
3 your phone call home, although the marshal will be monitoring
4 it, if you want your mail sent to you the marshal is going
5 to have to open it and make sure that you don't have a bunch
6 of clippings about this case and so on and so forth. For
7 example, he couldn't care less about your bills. If you want
8 to send your bills out just let the marshal know what it is
9 and let him take a look at it, he will send it out. If you
10 don't want to do it that way, what the marshal will have to
11 do is to hold all your mail, both incoming and outgoing,
12 until the end of the case. At that time he will give you all
13 the incoming stuff and mail out all the outgoing stuff.

14 Of course, at that point it will be academic.

15 The marshal, as I said, a Deputy Marshal, will be
16 with you just about all the time. If there are any difficul-
17 ties whatsoever put it in a sealed envelope and the marshal
18 will deliver that to me. Scribble it out and deliver it
19 to me.

20 I am also going to request the marshal to provide
21 for some modest refreshments, like tea or coffee or a Coke
22 or something, during the evening hours.

23 You should recognize also that you will not be
24 permitted indiscriminate watching of television. I will be
25 going through in the morning with the marshal the various

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411

2 there are and what is bad. I will tell you right now one
3 thing that is definitely bad is the news. If you want news-
4 papers I am going to have to direct the marshal to delete from
5 the newspaper any reference whatsoever to this case or any
6 other case going on at this point.

7 The marshal also will be directed to make provision
8 for you to go to church on Sunday, if you go on Sunday. If
9 you have some other day that you go let me know, we will see
10 if we can't work it out.

11 One other thing. If you have an appointment with a
12 doctor or if you need an appointment with a doctor -- I know
13 one gentleman, I have agreed already to arrange for certain
14 X-rays for him. I know that there may be people on the jury
15 who have to go and have periodic checkups. Don't worry about
16 that. Write it out, put it in an envelope, let me have it.
17 I assure you, we will take care of it. You are going to be
18 not only fed and housed, you are going to be coddled as far
19 as your health is concerned.

20 You may wonder whether you can have visitors. Basic
21 the answer is yes. If your wife or husband wants to come
22 down and visit you while you are not in this courthouse there
23 will hopefully be a sitting room. There is going to be a
24 sitting room there and they certainly can come in and talk
25 to you. The only thing is, you have to recognize if you come

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412

2 from a large family like I do, you can't have 13 visitors all
3 at once. If need be I might restrict the number of visitors.
4 But use your common sense and I won't.

5 I am going to ask you also that any communication with
6 me be directed in writing, put in a sealed envelope, given
7 to the marshal. If you feel it needs immediate attention the
8 marshal will have my home phone number and I will take care
9 of it anytime of the day or night. That is the only time he
10 will open it, if you need immediate attention.

11 JUROR NUMBER 9: May I talk to you a minute?

12 THE COURT: Yes, sir.

13 (At the side bar.)

14 JUROR NUMBER 9: I already asked the marshall if he
15 could see you about it. I am a school teacher and the semester
16 ended and there is no problem, but the computer cards -- I
17 talked to my principal this morning, said I am on a case and
18 couldn't get out. So he said the computer cards could be
19 given to a Mr. Moran, a school teacher who lives in Kew
20 Gardens, and he should be taking them to his house in Kew
21 Gardens about 6:00.

22 THE COURT: What are the computer cards for?

23 JUROR NUMBER 9: For the report cards for the students.

24 I'm sorry. I didn't explain myself properly. It's rather
25 important that these computer cards be returned by Monday

2 morning. If sometime between now and Sunday night I could
3 have the computer cards and my class record book, which Mr.
4 Moran will have --

5 THE COURT: In other words, the whole thing.

6 JUROR NUMBER 9: Yes. All I have to do -- the only
7 reason I am asking is there are 150 kids and I have to make
8 decisions.

9 THE COURT: We will arrange for the kids to get their
10 marks. Don't worry about it.

11 JUROR NUMBER 9: He expects me 6:00 or 7:00 tonight.
12 I didn't even tell him enough about the trial so that he
13 doesn't expect me. So if I am not going to get them I could
14 make a' phone call.

15 THE COURT: All right.

16 (Pause.)

17 JUROR NUMBER 9: One last thing. You haven't
18 mentioned how you are going to contact our employers.

19 THE COURT: I will take care of that.

20 JUROR NUMBER 9: All right. Thank you very much.

21 (In open court.)

22 JUROR NUMBER 11: Sir, may I speak to you? I don't
23 want to interrupt.

24 THE COURT: Are you the juror with a car in Fort Lee?

25 JUROR NUMBER 11: Yes.

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2 THE COURT: I have talked to the marshall about it
3 already and we are going to make arrangements to take care
4 of your car in Fort Lee.

5 Anybody else? You want to come up? Come up.

6 (At the side bar.)

7 THE COURT: Yes.

8 JUROR NUMBER 3: I have a invitation to a wedding on
9 Saturday. Is that excusable?

10 THE COURT: I'm sorry, it's not.

11 JUROR NUMBER 3: I't in Jersey.

12 THE COURT: I'm afraid it's not.

13 JUROR NUMBER 3: I'ts not excusable?

14 THE COURT: No. If you want to give me the name and
15 address of the folks, I will call them up myself and explain.

16 JUROR NUMBER 3: It won't be necessary. I have the
17 invitation here with me.

18 THE COURT: I'm sorry, Ma'am.

19 JUROR NUMBER 3: Okay. Thanks.

20 MR. PHILLIPS: Your Honor, Juror number 11 indicated
21 he had other problems besides a car in Fort Lee.

22 (In open Court.)

23 THE COURT: Do you want to see me?

24 JUROR NUMBER 11: Yes, sir.

25 THE COURT: Come up.

T6 PM

1 MP

2 (Discussion at the side bar with Juror Number 11.)

3 THE COURT: You have the guidelines, and you will
4 have a copy of the form tomorrow.

5 Thank you very much.

6 Marshal, will you escort the jury out, and make
7 the necessary arrangements.

8 (The jury left the courtroom.)

9 THE COURT: All right, gentlemen. That finishes
10 us up until ten o'clock tomorrow.11 I don't know if the people are here on the Gerard
12 case. I will take a five-minute break for my own personal
13 problems.

14 (Adjourned to January 25, 1974, at 10:00 a.m.)

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